

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

Writ Petition No.12804/1994

Madarsha  
S/o Osman Sab Fakir,  
Muslim, major,  
Occ: Mutavalli  
& Agriculturist,  
R/o Mudabi Village,  
Taluk: Basavakalyan,  
District: Bidar.  
.. Petitioner

(By Sri N.K.Patil,  
Advocate)

Vs.

1. The State of Karnataka  
by its Secretary,  
Revenue Department,  
M.S.Buildings,  
Bangalore.
2. The Deputy Commissioner  
Bidar Dist., Bidar.
3. The Secretary,  
Karnataka Board of Wakf,  
'Darul Awakf',  
No.6,  
Cunningham Road,  
Bangalore-52.
4. The District Wakf  
Committee, Bidar,  
by its Chairman.
5. The Tahsildar,  
Basavakalyan,  
District: Bidar.
6. Abdul Azeez  
S/o Shaikh Chand Sab,  
aged about 55 years,

Occ: Agriculture,  
President,  
Masjid Committee,  
Mudabi,  
Taluk: Basavakalyan,  
Dist: Bidar.

.. Respondents

(By Sri K.S.Savanur,  
Adv. for Respondent-6;  
Sri Mali Patil,  
Adv. for Respondent-3;  
Sri N.P.Singri,  
HCGP for Respondents-1,  
2 and 5)

Writ Petition filed under Articles 226 and 227 of the Constitution of India seeking for the quashing of the order dated 26-4-1993 passed by the second respondent vide Annexure-E and also for a direction to the 6th respondent not to interfere with the peaceful possession and enjoyment of 30 guntas of land in Sy.No.221 of Mudabi village, Basavakalyan Taluk, Bidar Dist., etc.

This petition coming on for preliminary hearing before Court this day, the Court made the following:

#### O R D E R

Though this petition is listed for preliminary hearing in 'B Group', with the consent of learned Counsel appearing for the parties, it is taken up for final hearing and disposed of by this order.

2. The petitioner, in this petition, has called in question the correctness of the order dated 26th of April 1993, a copy of



which has been produced as Annexure-E, wherein the land measuring 14 guntas in Survey No.221/1 was allotted in favour of the Masjid Committee, Mudabi, for the purpose of construction of a Masjid.

3. Sri N.K.Patil, learned Counsel appearing for the petitioner, submitted that the land measuring 20 guntas in Survey No.221 was allotted to Dargah, of which the petitioner is the Muthavalli, by means of ~~the~~ order dated 28th of June 1991, a copy of which has been produced as Annexure-B; and, therefore, it was not permissible for the second respondent to allot the very land in favour of the Masjid Committee represented by the 6th respondent. He further submitted that the order Annexure-E came to be passed without hearing the petitioner and also respondents 3 and 4.

4. However, Sri K.S.Savanur, learned Counsel appearing for the 6th respondent, submitted that the land sanctioned in favour of the petitioner is quite different from 14 guntas of land granted in favour of the Masjid

*by*

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Committee. In this connection, he drew my attention to the report of the Assistant Commissioner dated 30th of March 1991, a copy of which has been produced as Annexure-R1, wherein it is disclosed that the total extent of land in Survey No.221 is 8 acres 25 guntas; and after allotting various portions of lands to various persons, still there is 5 acres 23 guntas of land available in the said survey number. He further submitted that the report also discloses that the Dargah of which the 6th respondent is the President, is in possession of ~~14~~✓ 14 guntas of land in the said survey number. He also submitted that since the land has been granted for the purpose of putting up a Masjid by the Muslim community, this is not a fit case for interference by this Court against the order impugned.

5. Since it is not in dispute that the petitioner was not heard before passing the order Annexure-E granting 14 guntas of land in favour of the Masjid Committee and since it is not made clear whether the land <sup>meaning</sup> ~~is~~ 14 guntas granted to the Masjid Committee is the

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very land which was granted in favour of Dargah, I am of the view that it would be in the interest of justice to direct the first respondent to reconsider the entire matter afresh. Since the extent of the land in Survey No.221/1 is 8 acres 25 guntas and out of it, 5 acres 23 guntas of land is available, the interest of justice would be met if a direction is given to the second respondent to reconsider the entire matter without quashing the grant made in favour of the Masjid Committee at this stage, after hearing the petitioner and respondents 3, 4 and 6 and all others who may have interest in the grant of the land in Survey No.220/1, and pass fresh orders after conducting fresh enquiry with regard to the land granted in favour of Dargah and also in favour of the Masjid Committee.

6. The petitioner and respondents 3, 4 and 6 are directed to appear before the second respondent for the purpose of fresh enquiry on 30-6-1998 at 3-00 p.m. The second respondent shall pass appropriate orders after hearing the petitioner and respondents



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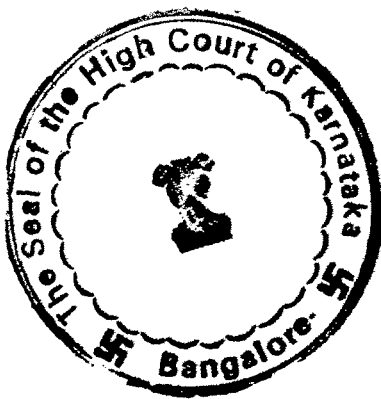
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3, 4 and 6 and all other persons, who are interested in the land, within two months from 30-6-1998. The petitioner and respondents 3, 4 and 6 are not entitled for fresh notice from the second respondent.

7. In terms stated above, this petition is disposed of.

8. The Office is directed to communicate a copy of this order to the second respondent within a week from today.

9. Sri Singri, learned Government Pleader, is permitted to file his memo of appearance within four weeks from today.



Sd/-  
JUDGE

✓

ANB.